

HB 697 with HCA 1 -- EXPERT WITNESSES

SPONSOR: Corlew

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Civil and Criminal Proceedings by a vote of 7 to 5.

This bill specifies that a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue, the testimony is based on sufficient facts or data, the testimony is the product of reliable principles and methods, and the expert has reliably applied the principles and methods to the facts of the case.

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, such facts or data need not be admissible for the opinion to be admitted. However, if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

An expert opinion is not objectionable because it embraces an ultimate issue. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense, as those matters are for the jury alone.

Unless the court orders otherwise, an expert may state an opinion and give the reasons for it without first testifying to the underlying facts or data. However, the expert may be required to disclose those facts or data on cross-examination.

HCA 1: Allows family and juvenile law cases to retain the current admissibility standard for their dockets.

PROPONENTS: Supporters say that the bill will bring Missouri into line with the federal judicial system by replacing the Fry standard with the Daubert standard to admit the testimony of expert witnesses. This will require attorneys to select better experts and will increase the reliability and certainty of outcomes for cases.

Testifying for the bill were Representative Corlew; Judge Jon Gray,

Shook Hardy And Bacon; Missouri State Medical Association; Jerry Nole, Missouri Organization of Defense Lawyers; Missouri Chamber of Commerce And Industry; Rich Aubuchon, American National Property And Casualty; The Doctors Company; NORCAL Group; Missouri Dermatological Society Association; Signature Medical Group; BNSF Railway; Missouri Optometric Association; American Association of Obstetricians and Gynecologists; Kevin Hillman, Missouri Association of Prosecuting Attorneys; David Jackson, Missouri Ambulatory Surgery Center Association; Missouri Society of Anesthesiologists; Associated Industries of Missouri; Missouri Hospital Association; and Missouri Society Of CPAs.

OPPONENTS: Those who oppose the bill say that Missouri's system has worked for decades and there is no reason to change it now. Moreover, the swapping of Fry for Daubert only serves to shift the burden of deciding if evidence is credible from the field of experts to the judges. Judges are not trained experts and therefore cannot reasonably be expected to be skilled at discerning whether or not an expert's testimony is reliable. Finally, the imposition of a Daubert standard will tax judicial resources and will cause major backlogs in jurisdictions where the courts have fewer resources.

Testifying against the bill were Brian McCallister and Ken Barnes, Missouri Association of Trial Attorneys; Sheet Metal, Air, Rail and Transportation (SMART); Missouri Coalition Against Domestic And Sexual Violence; Luann V. Madsen, Missouri Associate Circuit Judges Association; and John Bond, AFL-CIO.

Testifying for informational purposes only was David J. Klarich, Missouri Circuit Judges Association.